

SEP 02 2005

PATENT
YOR920000192 IBM-2282

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Alan Gene Gara
Serial Number : 09/799,038 09/779038
Filing Date : February 8, 2001
Examiner : Qutbudden Ghulamali
Group Art Unit : 2637
For : BINARY DATA TRANSMISSION ON A
SINGLE TRANSMISSION CHANNEL

TO: The Honorable Commissioner of Patents
and Trademarks
Post Office Box 1450
Alexandria, VA 22313-1450

PETITION TO REVIVE ABANDONED APPLICATION

The undersigned, as Attorney of Record, submits this petition to request that a holding of Abandonment of the above-entitled application be withdrawn. This Petition is submitted despite the fact that there has been no specific Notice of Abandonment sent to Applicant by the United States Patent and Trademark Office ("USPTO").

An Official Action in this case dated July 30, 2004, was sent by the Examiner to Applicant. The Official Action required minor changes to Figure 2 of the drawings, rejected some claims and allowed claims 5 and 13 subject to inclusion of the base claim and any intervening claims therein.

Applicant's Attorney prepared an amendment in compliance with what the Examiner had

suggested in the Official Action with the expectation that Claims 5 and 13 would be issued in amended form. He filed a written response to the Official Action on October 28, 2004 by telefax sent to (703) 872-9306 which at the time was the correct fax number for filing submissions with the USPTO. A copy of the Amendment so transmitted on October 28, 2004 is enclosed as Appendix A. An enlarged segment of the page containing the Certificate of Mailing (Transmission) is enclosed as Appendix B.

Immediately after Appendix A (and inherently, Appendix B) was filed, Applicant's Attorney did not receive an auto-reply facsimile transmission confirmation of receipt form. At that time, it was assumed that the receipt was not transmitted by return fax because there was a backlog of receipts to be sent out from the automatic return system in the USPTO.

Applicant's Attorney obtained corrected drawings and filed same using the U.S. Postal Service on October 29, 2004.

In May of this year, as part of a routine status checkup of cases within his docket, Applicant's Attorney noted that there was no communication received from the USPTO with respect to this case. Applicant's attorney called the Examiner in charge of this application to inquire why no further communication had been received and the Examiner advised Applicant's attorney that no response (i.e., Appendix A) amending the claims had been received; but the USPTO had received the amended drawings. Upon receiving that information, Applicant's Attorney submitted a copy of the amended that had been transmitted on October 28, 2004. This later copy of appendix A was telefaxed on May 27, 2005.

On August 9, 2005 Applicant received an Official Action in which the Examiner did not declare or hold that the application was abandoned, but rather stated that "*...The Application will become abandoned unless applicant obtains an extension of the period for reply set in the above noted Official Action*"...

Upon receipt of the Official Action, Applicant's Attorney immediately called the Examiner in charge of the case to again discuss the situation.

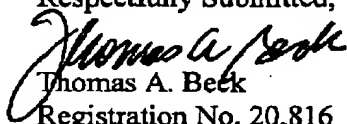
After several conversations with the Examiner, Applicant's Attorney consulted with Mr. Douglas Wood of the USPTO who advised that the instant petition should be made in the form of a Petition to Withdraw a Holding of Abandonment as the case was abandoned as a matter of law, even though no specific document has been issued that specifically states that the case is held to be abandoned. By using such a title designation, the Examiner can consider the case and act promptly on the request, thus keeping it within the Group.

Applicant respectfully requests that the holding of "Abandonment" in this application be withdrawn since Applicant did submit the Appendix A amendment response timely, i.e. prior to October 30, 2004. Appendix B supports this assertion. Applicant's Attorney states unequivocally that he filed the response with the USPTO by fax on the date, both as stated in Appendix A

The courtesy extended to Applicant's Attorney by Examiner Ghulamali and Mr Wood during the many telephone conferences on this case is gratefully acknowledged.

As anecdotal evidence in this matter, Applicant's Attorney declares that in the past three days he has submitted papers to the USPTO to both the new fax number and the old one, and at no time has he received a confirmation of the receipt of the transmission of any of these documents so sent. Thus inferences of problems within the telefacsimile system of the USPTO can properly be drawn. Applicant will mail a duplicate copy of this Petition to insure that it is received.

Respectfully Submitted,



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I hereby certify that this paper is being telefaxed to (571) 273-8300 on the date indicated below and is addressed to Commissioner of Patents & Trademarks, Post Office Box 1450, Alexandria, VA 22313-1450.

Signature: 

Name:

Thomas A. Beck

Date: September 2, 2005